

WHARTON PLANNING BOARD  
SPECIAL MEETING  
March 29, 2018

The special meeting of the Wharton Planning Board was called to order with Chairman Ken Loury reading the Open Meeting Statement as required by law.

ROLL CALL was taken and the following members were present: Chairman Ken Loury, Mr. Roger Steele, Ms. Charlotte Kelly, Mr. Mark Harris, Mr. Patrick O'Brien, Ms. Jennifer O'Malley-Dorr, Mr. Jared Coursen, Mr. Brian Bosworth and Mr. Peter Rathjens. Also present were Attorney Alan Zakin, Planner Jessica Caldwell, Engineer Christopher Borinski and Secretary Patricia Craven. Excused were Mayor Chegwiddden and Councilman Tom Yeager.

Chairman Loury led those present in the Pledge of Allegiance to the Flag.

The reading of the bills was next. A Motion was made by Charlotte Kelly and Seconded by Roger Steele to approve the bills as read. YEA – 9 NAY – 0

Next, under new business, was the Application for Taco Bell. Attorney for Taco Bell, Jason Tuvel, addressed the Board. They are seeking Preliminary and Final Site Plan approval, Use Variance and Bulk Variance relief for property located at 321 Route 15 which is the Busy Lady Plaza. They are proposing to add a second building in the parking lot of the existing shopping center. That building will be approximately 2,080 sq. ft. With 42 seats and a drive thru. They met with our professionals several times to go over the layout and have taken many of their recommendations under consideration.

Mr. Tuvel stated that Taco Bell will be open from 6 am to 1 am, 7 days a week. The highest shift of employees during peak hours will be 7. They get 2 deliveries a week by tractor trailer between the hours of 1 am and 6 am when the Taco Bell is closed. Trash pick up is 2 times a week by a private hauler.

Mr. Tuvel stated that they need a Use Variance, not because of the use, which is permitted, but because of a second principal building on the lot, which is not permitted. They need a D variance. The property size is more than 1 ½ times what is permitted in the zone. This application will reduce the impervious coverage. It is now 93% and they are reducing it to about 86%.

Mr. Tuvel stated that they will need a C variance for the signs and one setback variance for the side yard which backs up to a parking lot on the side of the building facing the bank. They comply with the majority of the Bulk variances.

Their first witness, Engineer Michael Dipple was sworn in and qualified as an expert witness. He provided exhibit:

**A-1, 3/29/18** – Aerial Photo of Site taken from Google Earth and downloaded today. He stated that the yellow line on the photo outlines the property in it's existing condition. He went on to explain the site and its surroundings. He pointed out Costco to the north, the bank to the east and

a furniture store, diner and Shop Rite across the street. There is an existing retail building on the site. They have 111 parking spaces. The impervious coverage is 93.23% with some green space on the site.

Next, Mr. Dipple referred to the Preliminary and Final Site Plan dated 11/21/17 that was included in the packets. It consists of 12 sheets plus 3 Architectural sheets. He went on to describe sheet:

C-02 which shows existing conditions and the removal of parking spaces and asphalt.

C-03 titled Site Plan. He brought with him a colored version of this plan which was marked into evidence as:

**A-2, 3-29-18** Colored Site Plan – which has landscaping superimposed on it. He went on to describe the rendering:

Peach color – existing building

Dark Orange – Taco Bell

Green – Grass and Bushes

Gray - the asphalt

Sand Color - concrete

They will have a drive thru window and a trash enclosure.

Mr. Dipple stated that they will be reducing the parking from 111 spaces to 83 spaces. They are eliminated some spaces along Route 15 and the easterly part of the site. There is no change to the Rt. 15 driveway. The drive thru is accessed from the back of the site and will have an 8 vehicle queue before the drive thru window. When traveling south on Route 15 there is a left turn lane into the site. The driveway is lined up with the eastern most parking aisle. They are not proposing any changes to the existing building or other parking areas.

Mr. Dipple went over the table on the right side of the Site Plan C-03. They are in the B-2 – Regional Business zone. The Site is 1.48 acres. He stated that the existing building meets does not meet the front yard setback of 50 ft. but the Taco Bell does at 53.4 ft. The lot area required is 40,000 sq. ft. and they have 64, 336 sq. ft. The lot width substantially exceeds what is required as well as the lot depth.

Attorney Tuvel pointed out that even though the Ordinance states that you can have only 1 building per lot, the lot area they have for this lot is 1 ½ times what is allowed. This is one of the particularly suitability reasons for having 2 principal buildings on one lot. Adding the existing building and the Taco Bell together they are still below the maximum density/floor area ratio allowed on the site.

Mr. Dipple stated that they will need a variance for side yard setback for the Taco Bell. 25ft. is required and they are proposing 12.07 ft. The minimum rear yard setback required is 40 ft. with the existing building being short of that at 24.98 ft while the Taco Bell does comply with 111.82 ft. from the rear property line. They will be reducing the impervious coverage from 93.32% to 86.59% and are still not compliant but they have added a substantial amount of green space. They are in compliance with the other Bulk requirements. They will also need a D- variance for the 2 buildings on one lot. Mr. Dipple went over the parking table and they are proposing 83 spaces which exceed the 79 required.

C-04 Grading, Drainage & Utilities of the submitted Site Plan – Utilities are from Route 15. Everything drains in a southwesterly direction to the Route 15 right of way.

C-05 Lighting Plan – the lighting to match the lighting in the parking lot. LED fixtures on the building. They have one single head pole fixture and one double head pole fixture.

C-06 Landscaping – they will be adding landscaping around the Taco Bell site.

C-07 – Soil erosion & Sediment control plan – they will require a permit from Morris County Soil Conservation

C-08 – Vehicle Circulation Plan – shows circulation on the site.

The free-standing ground sign for Taco Bell will be 10 ft back, off of the right of way line by the drive out lane of the drive through. They are also proposing a site ID sign on the existing Busy Lady shopping center sign. There should be no issue with the site triangle.

Mr. Dipple went over the Engineer's letter dated 3/7/18. He stated that they did receive a letter from the Wharton Police Department. There are a few plan items that the Borough Engineer would like them to clean up and they are willing to do so. They did a study to show there is sufficient parking. They will make sure that the 3 – 3 1/2 ft railroad tie retaining wall next to the proposed building is structurally safe. He feels that they will be improving the drainage by adding all the lawn and landscaping which will push the drainage back out to the right of way. They will add a stop bar, a sign such as "Don't block the Box" and some striping at the end of the drive thru lane. The striping will help deter cars from sitting in that area. There will be room for 2 cars to stack before the stop bar once they leave the window. They are willing to work with the Police and Engineer to improve some of the signage and striping. They will comply with the Engineer's comments.

Marked into evidence were:

**A-3 – 3/29/18** – Color Preliminary Exterior Elevation which shows 2 sides of the building – one on the top is the side facing east and the bottom is the side facing west.

**A-4 – 3/29/18** - Color Preliminary Exterior Elevation which show 2 sides of the building, the front and rear.

Attorney Tuvel stated that all the HVAC equipment will be screened on the roof top and will not be visible from the street.

Mr. Dipple spoke about A-3 which shows the unique architectural features with a modern look. The top picture is the façade facing the bank which shows an access door and the Taco Bell logo on that side. This is what you see when you are travelling on Route 15 north. The bottom picture shows the façade facing the parking lot. It shows the drive thru window and the rust panel with the Taco Bell logo and sign. Corporate determines the colors and style of the building.

A-4 -top shows the back of the building which faces Costco and the bottom shows the façade that faces Route 15 and has the 24 ft tower with the Taco Bell sign. They will fix the light pole that has been broken on the site. Snow removal will probably be pushed to the back of the site and if need be they will remove the snow from the site. Mr. Dipple pointed out the sidewalks, crosswalks and entrances. He stated that they will have landscaping on the easterly side of the building facing the bank which should deter anyone from parking by the bank and walking up the embankment to the Taco Bell. The crosswalk does cross the drive thru lane. They will add

more signage and striping if needed. Mark Harris asked about putting the drive thru on the other side. Mr. Dipple stated that that would then push the building back and bring the queue line out closer to the DOT right of way which would be rejected by the DOT. The Engineer in his memo mentioned about flipping the building but then the drive thru window would be on the passenger side of the car. The drive thru lane is counted in the maximum impervious coverage.

Mr. Tuvel stated that the 7 ft height bar that is over the back entrance going to the Costo site will be coming down. Planner Joseph Burgis who was the Borough Planner at the time of the application stated that it was part of the original site plan but was not a condition.

Engineer Borinski asked if the current ADA and curb ramp will be updated on the existing site. The engineer stated that they can come up with a compliant design or sufficiently compliant compared to what is out there. He also stated that the new lighting will be LED, but the existing lighting will not be LED. The new lighting will match the height and look of the existing lighting. The 6 lights around the building will be LED. They will be repairing the fixture that came down. There are 5 existing fixtures and they will be adding 1 double head and 1 single head plus the one that they are fixing. All the fixtures will look alike and be consistent subject to the approval from the Borough professionals

Mr. Dipple stated that the existing trash enclosure is in the north west corner of the site. To pick up the trash the hauler must back in and then pull out. The deliveries for the existing businesses are to the front of the building. Taco Bell's deliveries are twice a week at off hours when they are closed and the garbage pick up will be at off peak hours before 8 am. They will have a trash enclosure with a concrete pad which has good access for the trucks picking up. It will be a fenced board on board, 10 x 26 – 4 doors enclosure for both recycling and trash.

Engineer Borinski stated that the ordinance requires trees in the parking lot and asked if they were planning on sprucing up the rest of the site. Engineer Dipple stated that they did not show the existing landscaping and stated that they would work with the engineer and planner to provide some more landscaping. As a condition they will make the landscaping dense along the side facing the bank to deter people from parking in the lower lot and walking up the embankment.

Engineer Borinski asked if there was any written agreement with Costo about the driveway connecting the properties. Attorney Tuvel stated that in their research there was no agreement.

Planner Jessica had not comments or questions.

Chief of Police Fernandez addressed the Engineer. He stated that the driveway coming in from Route 15 is very narrow, is at an incline and is very hard to maneuver both in and out. He is over there every day so he is speaking from experience. He asked if it could be widened. He knows it is a DOT issue but he believes it would be helpful for incoming and outgoing traffic. He would also like to see Title 39 on the property, upgrading to the lighting and handicapped spots properly marked.

The meeting was now open to the public. Bill Skewes of 120 E. Central Ave., Wharton stated that he noticed there are no requirements for drainage and that they would be draining out onto Route 15. He stated that the bank has a retention pond and why not require that the drainage drain to the retention pond. Mr. Dipple stated that they are bound by the Storm Water Management Rules and the State Ordinances. This site is not required to have a retention basin. Adding landscaping to the side helps reduce and control the runoff. They cannot send their runoff into another properties detention basin.

Attorney Tuvel stated that even though they are reducing the impervious coverage it is still above what is required and doesn't feel they need a variance but has applied for it anyway. It is preexisting, non-conforming and they are improving it.

Mr. Skewes was also concerned about the width of the aisle coming in from Route 15 especially with the larger trucks that come in and out of the site. He considered it a road which should be 28 feet wide. Mr. Dipple stated that it is an access way and is 24 ft wide which is standard and wide enough for 2-way traffic. He would not characterize it as a road. Chairman Loury stated that what Mr. Skewes is calling a road is not being changed. Mr. Dipple's professional opinion is that the 24 ft. is wide enough.

Traffic Engineer Elizabeth Dolan was sworn in and qualified as a Licensed Traffic Engineer. Ms. Dolan stated that she has prepared the traffic impact analysis for the Taco Bell site. The traffic study focuses on 2 peak periods, one is rush hour and the other is Saturday mid-day. Taco Bell's busiest period is lunch time, 11 am to 1:30 pm., 7 days a week. Dinner time is busy but the breakfast is not. The purpose of the analysis is to match peak street activity to peak Taco Bell activity. They performed the traffic counts at the 2 site driveways on the property. One is the Route 15 entrance and the other is the access drive to the Costco site. They did Saturday lunch time counts on July 29, 2017 and August 5, 2017 and weekday counts on July 18<sup>th</sup> and July 20<sup>th</sup>, 2017. They isolated the peak hour volumes over a 2 ½ hour period and then isolated the 4 consecutive 15-minute traffic counts and that is the peak hour. When they isolate the weekday evenings and the Saturday mid-day peak hours they then have to add to it traffic associated with the Taco Bell. They are recording all the vehicles that enter and exit and travel past the site on Route 15. Since Taco Bell is not there yet they go to records material for fast food restaurants with a drive thru published by the Institute of Transportation Engineers. What they found for the weekday evening 4:45 to 5:45 is 34 vehicles entering and 34 exiting and Saturday mid-day from 11:45 to 12:45 is 57 vehicles entering and 57 exiting. This does not take into consideration any vehicles coming from the Costco site to the Taco Bell. They did use as a credit, the "pass-by" traffic which is traffic that is already passing by the site on Route 15. For a fast food restaurant, the documented pass by rate is 50% which means that those 34 vehicles coming during the peak hours are not just coming to the Taco Bell. 17 of them are passing by and stopping at the Taco Bell. This would be the same for the other counts as well. What they found is that there will be no significant impact to the main access system. They submitted all their calculations to the DOT as well as the site plan and survey and the DOT issued a letter of no interest. They did get some updated traffic counts which she does not feel will change the analysis a great degree but they can update their analysis if the Board and Engineer so choose. Ms. Dolan stated that the DOT would not approve the changing of the building on the site to put the drive thru on the other side because of the possible backup of the queue into the right of way. She stated that a queue of 8 is

recommended. She agreed with Mr. Dipple on the addition of a stop bar and stop sign at the exit of the drive thru as well as a do not block the box as well as a do not enter sign.

Chairman Loury asked about the egress and ingress from Route 15. Ms. Dolan stated that in the driveway throat, which is between Route 15 and the exit of the drive thru, there is room for 1 car in each direction to fit in that area.

Peter Rathjens asked about signage for the drive thru. Ms. Dolan stated that they can add a drive thru entrance sign with an arrow if they feel it is needed. Mr. Steele asked about signage for Route 15 South since you can't make a left out of the parking lot onto Route 15 South. She stated that the signage should read "Right Hand Turn Only" at the exit driveway onto Route 15. They can also add signage across from the drive thru exit to point the way to Route 15 South through the Costco parking lot.

Chief Fernandez asked about opening the mouth of the driveway coming in from Route 15, not at the curb line but the mouth inside the parking lot. Opening that mouth would make the turning much easier. After much discussion it was decided that they would modify that area by moving the first aisle on the left, coming in from Route 15, further into the interior. They may lose a few parking spaces on the left side that faces Route 15 but they would still have plenty of parking. They would then have more green space when they remove the spaces which would reduce the impervious coverage.

Chairman Loury was concerned about the access to the Costco site and the fact that Costco might, in the future, close that off. Attorney Tuvel stated that if it was part of the Costco site plan they might have to come back before the Board to change that. He stated that he would reach out to Costco's Attorney John Wyciskala, to see about a cross easement. As Mr. Burgis recalls Costco did want to have cross access.

Ms. Dolan explained that if patrons want to go south on Route 15 they would go through the Costco site to the traffic light on Route 15.

Chief Fernandez stated that when they do the enforcement of Title 39 they will need corrected striping and signage on the total site and handicapped areas. The entire site has to be upgraded. This will be a condition.

Engineer Borinski asked about a bypass lane for the drive thru. Ms. Dolan stated it is a want, not a need. In this particular case anyone approaching the drive thru has the ability to see if it's backing up and can choose to park their vehicle and go inside. The only time it would be a benefit is if someone breaks down, which she has never heard of that happening.

Ms. Dolan does not think that if they take the overpass down between the Costo site and this site that there would be more traffic and or truck traffic coming onto this site.

Planner Caldwell suggested that they have signage across from the exit of the drive thru that tells patrons which direction to exit to go to get to Route 15 North and to Route 15 South.

The meeting was open to the public and then closed.

After a 5-minute break, Roll Call was taken and the following were in attendance: Chairman Ken Loury, Mr. Roger Steele, Ms. Charlotte Kelly, Mr. Mark Harris, Mr. Patrick O'Brien, Ms. Jennifer O'Malley-Dorr, Mr. Jared Coursen, Mr. Brian Bosworth and Mr. Peter Rathjens. Also present were Attorney Alan Zakin, Planner Jessica Caldwell, Engineer Christopher Borinski and Secretary Patricia Craven. Excused were Mayor Chegwiddden and Councilman Tom Yeager.

Planner Joseph Burgis of Burgis Associates was sworn in and qualified as an expert Professional Planner. He gave an overview of the application. He stated that there are 4 variances associated with this application:

1 – D-1 use variance for 2 principal buildings on one lot.

2, 3 & 4 - C variance – side yard setback to the east, impervious coverage and sign variances.

D-1 variance – there are 4 special reasons:

1. Particularly Suited - the site is particularly suited for having 2 principle buildings on one lot. The site is underutilized for building coverage. Maximum building coverage allowed is 40% and they are presently at 21.9%. If you added this building onto to the existing building they would be at 25% and still be under the allowed coverage. Another reason it is particularly suited is the configuration of the site with 2 buildings on either side of a central parking lot. It represents a good, solid efficient design.
2. Improved aesthetics – they are adding landscaping features along the street edge and are reducing the large paved look of the site. This is what people will see when they pass by on Route 15. The landscape design serves to enhance the visual character of the property. They are building an attractive building on the site.
3. Infrastructure is affirmed – traffic circulation is enhanced.
4. Furthering the purpose of the Land Use Law – circulation and pedestrian movement improvements. Creating a desirable visual environment and more efficient use of the land.

Mr. Burgis found no substantial detriment to the public good and they are not inconsistent with the Master Plan. The site is particularly suited for this application and the goals and objectives of the Master Plan are adequately affirmed by this application.

C – Variance

1. Side Yard to the East. 25 feet is required and they are proposing 12 ft. They are not infringing on the property next door and are providing adequate lighting, air and open space. The property on the east side is next to a parking lot for the Costco. There are no buildings and it is a wide-open area. The Intent is still being met by this application.
2. Impervious coverage – The original application for Busy Lady was granted a variance for impervious coverage and with this application the coverage is being reduced. Mr. Burgis agrees that they do not need a variance. Attorney Tuvel put in for a variance just in case.

Signage – they are adding a second free standing sign to the site where only one is permitted. The shopping center has a free-standing sign as well. Since there will be a second free standing building with a second occupant it makes sense to have a second free standing sign to identify

that additional building. Being on Route 15 they need that additional visibility before they get to the entrance. They are also requesting 5 additional building signs. The buildings access is a slightly different orientation and you want to be able to let people know you are there from both directions when traveling on Route 15. This is a specific uniformed package for Taco Bell.

The Signs needed are:

- 1 - Bell on the front of the tower
- 2 - Taco Bell on the front of the tower
- 3 - Bell on the side of the tower
- 4 - Taco Bell on the side of the tower
- 5 - Taco Bell on the side

These sides are shown on A-3. They meet the area requirement. The signs are internally illuminated. There is no substantial detriment to the public good.

For the C-1 and C-2 variances there is no substantial detriment to the public good and no substantial impairment to the intent of the Master Plan and the zone plan.

Planner Caldwell asked about the brown panel being part of the sign. Planner Burgis explained that it was not. Ms. Caldwell stated that Mr. Burgis testimony on the D-1 variance was strong. As far as the side yard setback there isn't much more you can do with the building and it is next to a parking lot. As far as the internally illumination of the signs she didn't know if the applicant would do any kind of up lighting from the exterior. The number and size of signs seem reasonable especially because of the 2 directions of traffic on Route 15.

The meeting was open and closed to the public.

Architect John Hubert was sworn in and qualified as a Licensed Architect. He stated that the purple that you see behind the brown slats is actually painted on the facade of the building so you see it during the day. It is softly illuminated from the back. It is not a corporate requirement from Taco Bell that it be installed. The applicant would like to have it lit. It does not create enough light to throw a shadow of a person standing under it. It's just enough light so that you can see the purple. You cannot see the lights, they are behind the slats, A condition can be that the Planner and Engineer will approve the lighting. Chairman Loury wants to make sure it is described as softly lit.

As far as the signs, he has never seen the Taco Bell above the door illuminated from the top or bottom. He has seen the Taco Bell and the Bell part illuminated from either the top or bottom. The smaller Taco Bell is internally illuminated with an incandescent bulb. It was agreed that the signs can be illuminated because they are on Route 15. Looking at C-12 it shows the Taco Bell free standing sign which is a 9 ft. high x 4.9" wide internally illuminated sign. Only the color will be internally illuminated. There is only 1 color which is the color purple. The black and white do not count as colors. There is no yellow in the new sign for Taco Bell. They do not need a variance for the color. Planner Caldwell agreed.

Attorney Zakin went over the wording for the conditions of the soft lighting – Back lighting of the upper slat wall meets criteria of “softly lit” per approval of the Borough Engineer and Planner.



The meeting was now open and then closed to the public.

Attorney Tuvel reviewed with the Board the conditions and variances needed.

Conditions:

1. Pedestrian walkway sign
2. Stop Bar and Stop sign at the exit to the drive thru
3. Don't Block the Box
4. Removal of the 7 ft. bar between this site and Costco
5. Curb Ramp upgrading along the existing shopping center
6. Striping, handicapped and parking upgrading for the site
7. Title 39
8. Fix the broken light in the parking lot
9. All lights consistent throughout the site.
10. Trash enclosure will be board on board
11. Low landscaping on the east side of the proposed new building
12. Declaration of easement letter to Costco
13. Remove parking spaces and add landscaping along Route 15 with approval of the Engineer and Planner. They will keep the number of parking spaces at 79 but want the leeway to go to 75. They will show this on the plans.
14. Right turn only sign at the exit to Route 15
15. Route 15 South sign, with an arrow point to the right, across from the exit to the drive thru.
16. Back lighting of the upper slat wall meets criteria of "softly lit" per approval of the Borough Engineer and Planner.
17. Reasonable landscaping updates throughout the site to be approved by the Borough Planner and Engineer.

Variances:

1. D-1 – Use variance for 2 primary structure on one lot (the use is permitted)
2. C-1 – side yard
  - Impervious coverage (which has been decreased)
  - Multiple sign variance (2 free standing signs and 5 on the building)
  - Internally illuminated signs

Also voting on a Preliminary and Final Site plan.

A Motion was made by Roger Steele and Seconded by Jared Coursen to approve the application for a Preliminary and Final Site plan with the Conditions and Variances just discussed.

YEA – 9 NAY – 0

A Motion was made by Roger Steele and Seconded by Charlotte Kelly to adjourn.

YEA – 9 NAY – 0

Meeting adjourned 10:00 p.m.

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Patricia M. Craven – Secretary

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Ken Loury - Chairman